

DEPARTMENT OF BOATING AND WATERWAYS

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Information Letter

October 27, 2000

TO: *Licensed Yacht and Ship Brokers*

FROM: **Dave Trillo, Associate Boating Administrator**
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SUBJECTS: *1) New Laws, 2) Examination Results, 3) Licensing Information via Internet*

New Laws:

AB 2119, sponsored by the California Yacht Brokers Association and SB 1967, sponsored by the Department were signed by the Governor and will become effective on January 1, 2001, except for a provision relating to limited liability companies, which will go into effect on July 1, 2001.

The bills make several important changes to the Yacht and Ship Brokers Act (Act), as well as technical corrections and minor clarifications (Note: new changes are indicated by ***italicized bold***). Furthermore, you may notice that some of the code sections have changed in format (i.e. section 719).

1. Section 702.5 is added to the Harbors and Navigation Code, to read:

Any declaration, license, or other record electronically generated or transmitted pursuant to this article shall meet the requirements of a "record" under Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code.

2. Section 714 of the Harbors and Navigation Code is amended to read:

A licensed broker who accepts funds from others in connection with any transaction subject to this article who does not, as soon as possible, place those funds into a neutral escrow

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depository, shall place the funds into a trust fund account maintained by the broker in some bank or

recognized depository and shall retain all the funds in the account until the broker makes a disbursement of the funds in accordance with written instructions from the person entrusting the money. The written instructions shall also set forth the specific purposes for which the broker may use money deposited with him or her. If the broker wishes to use money from the deposit for a purpose not included in the written instructions, the broker shall first obtain the written consent of the person entrusting the money specifically authorizing the use proposed by the broker for the money. The written consent may be given to the broker by a letter or *facsimile*. A separate record shall be maintained of all moneys received subject to this section and shall further indicate the disposition thereof. Any funds received by a licensed salesperson shall be delivered by the salesperson to the broker under whom the salesperson is at the time licensed. As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by any person described by subdivision (a) or (c) of Section 17006 of the Financial Code.

3. Section 719 of the Harbors and Navigation Code is amended to read:

(a) A person shall be deemed qualified to submit an application for a broker's license if, as shown on the department's records, the person ***meets all of the following requirements:***

(1) Is at least 18 years of age.

(2) ***Has not been cited for a violation of this article within the preceding two years.***

(3) ***Possesses a working knowledge and understanding of the principles of the yacht brokerage business and profession.***

(4) Either has been employed within five years preceding his or her application as a California licensed salesperson for at least one year, has been licensed as a California broker within five years preceding his or her application, has owned and operated a marine business selling new or used yachts for a minimum of three continuous years, or has been employed as a broker or a yacht salesperson in another state where that employment was a primary occupation for a minimum of three continuous years immediately preceding application for a broker's license in California. Proof of employment as a broker in another state or as an employee of a marine business selling new or used yachts in California shall be in the form of all of the following:

(A) State, if applicable, and federal income tax returns, or a proof of earning statement made by the applicant under penalty of perjury, for the three-year period preceding the filing of the application in California.

(B) If bonded, a statement issued by the applicant's bonding company that no action has been taken against the bond for fraud or gross misrepresentation for the period for which the bond has been issued.

(C) A copy of all business permits, issued by any state, county, or city agency, which, if applicable, includes the fictitious business name ("dba" or "doing business as") under which then applicant conducted a yacht or ship brokerage business or a marine business selling new or used yachts in California for the three-year period preceding application for a California broker's license.

(D) If the applicant conducts a yacht or ship brokerage business in another state that requires broker or salesperson licensing, evidence of a current license issued by that state.

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(b) If the applicant is a partnership, then one of the partners of the applicant shall have the foregoing qualifications.

(c) If the applicant is a corporation, then the officer or officers of the corporation to be designated for a license as provided in this article shall have the foregoing qualifications.

4. Section 720 of the Harbors and Navigation Code is amended to read:

The department may require proof as it deems advisable concerning the honesty, truthfulness, and good reputation of the applicant for a broker's *or salesperson's* license or of the officers of any corporation making application before the issuance of a broker's license. For this purpose, the director may call a hearing in accordance with this article, and at the request of the applicant shall call a hearing.

5. Section 725 of the Harbors and Navigation Code is amended to read:

Temporary licenses may be issued to salespersons under the following conditions:

- (a) The licenses shall be issued for a period not to exceed 60 days and only one license shall be issued to each applicant.
- (b) An application shall be filed for a temporary license and for a permanent license and at the same time the applicant shall pay all the prescribed fees.
- (c) The application shall be in the form and upon the conditions required by the department as provided in this article with respect to a permanent salesperson's license.
- (d) On or before the expiration date of the temporary license, the licensee shall take a written examination for a permanent license. If, without a valid excuse, the licensee fails to appear for the examination at the time prescribed, the examination fee shall be forfeited. In the event of failure to pass the required examination, the department shall notify the applicant, may suggest further study, and upon payment of fees, shall schedule a reexamination.
- (e) ***The applicant shall be at least 18 years of age.***

6. Section 729.5 is added to the Harbors and Navigation Code, to read:

- (a) ***Any limited liability company licensed by the department as a yacht broker on July 1, 2001, in order to continue to be licensed after that date, shall apply to the department in the form of an individual, partnership, or corporation for a broker's license on or before the expiration date of its existing license.***
- (b) ***On or before February 1, 2001, the department shall provide notice of the requirements imposed by subdivision (a) to any limited liability company licensed by the department.***

7. Section 732 of the Harbors and Navigation Code is amended to read:

The department may deny an application or temporarily suspend or permanently revoke the license of

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a broker or a salesperson at any time if the licensee, while a broker or salesperson, in performing or attempting to perform any of the acts within the scope of this article, has committed any of the following acts:

(a) Makes any substantial misrepresentation, including a false advertisement or an omission of

relevant facts upon which any person has relied.

(b) Makes a false warranty of a character likely to influence, persuade, or induce any person with whom business is transacted under this article.

(c) Engages in a continued and flagrant course of misrepresentation or makes false warranties whether or not relied upon by another person.

(d) Acts for the buyer and seller in a transaction without full disclosure of that fact to the buyer and seller and their written consent, except in the case where the selling broker is not the listing broker.

(e) Commingles the money or other property of his or her principal with that of his or her own or uses it for any purpose other than that for which it was entrusted, when the yacht involved in the transaction is not his or her own.

(f) Disburses or uses entrusted money for purposes other than those specifically authorized by Section 714.

(g) Uses coercive or oppressive methods for the purpose of obtaining business or of procuring a listing or participating in a transaction.

(h) Quotes prices different from the gross listing prices without the consent of the seller.

(i) Engages in any other conduct constituting fraud or dishonest dealings, either with respect to his or her principal or other persons.

(j) Permits his or her name to be used for the purpose of assisting any person who is not a licensed broker or salesperson to evade this article.

(k) Demonstrates negligence or incompetence in performing any act for which he or she is required to hold a license.

(l) As a broker licensee, fails to exercise reasonable supervision over the activities of his or her salespersons, or, as the person designated by a corporate or partnership licensee, fails to exercise reasonable supervision and control over the activities of the corporation or partnership for which a yacht and ship broker's license is required.

(m) Fails to act in accordance with, or disregards, his or her fiduciary duty toward a principal.

(n) Violates any provisions of Section 708, 712, 714, 715, 716, 730, or 731, or the rules and regulations of the department implementing this article.

8. Section 733 of the Harbors and Navigation Code is amended to read:

The department may deny an application or may suspend or revoke the license of a yacht broker or yacht salesperson who, within four years immediately preceding, has committed any of the following acts:

(a) Has procured a license under this article for himself or herself or another by fraud, misrepresentation, or deceit.

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- (b) Has been convicted of a felony or any crime involving moral turpitude.
- (c) Has withheld information from the department that he or she at any time has been convicted of a felony or any crime involving moral turpitude.
- (d) Knowingly authorizes, directs, connives, or aids in the publication, advertisement, distribution, or circulation of any material false statements or misrepresentation concerning his or her business or any transaction under this article.
- (e) ***Has acted or conducted himself or herself in a manner that would warrant the denial of his or her application for a broker's or salesperson's license pursuant to Section 720.***

9. Section 735.2 is added to the Harbors and Navigation Code, to read:

The department shall accept any electronic record or electronic or digital signature created, generated, sent, communicated, received, or stored by electronic means on or after January 1, 2000. A "digital signature" means a signature that complies with the regulations adopted by the Secretary of State relating to digital signatures.

(IMPORTANT NOTE: Under the Uniform Electronic Transaction Act, a facsimile signature is considered a signed written authorization under Section 716 (a) and (b) of the Harbors and Navigation Code effective January 1, 2000.)

10. Section 739 of the Harbors and Navigation Code is amended to read:

Any person who violates any provision of this article, or any regulation adopted pursuant to this article, is liable for a penalty in an amount not less than one hundred dollars (\$100) and not to exceed one thousand five hundred dollars (\$1,500) for each separate violation. The penalties provided in this section are in addition to the remedies or penalties available under all other laws of this state.

Every civil ***or administrative*** action brought under this article at the request of the director shall be brought by the Attorney General in the name of the people of the State of California, in any court of competent jurisdiction, ***or through the Office of Administrative Hearings pursuant to Section 737***, except that, when the civil action is to be filed in a small claims court, the director may bring the action.

The amount of penalty that is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of the violation upon the implementation of the purposes and provisions of this article. Any sum that is recovered under this section shall be deposited in the State Treasury to the credit of the Harbors and Watercraft Revolving Fund.

Examination Results:

Generally the exam for both broker and salesperson are administered on Saturday's. Once the exam has been administered, the Proctor will immediately mail the score sheets to the Department, located in Sacramento. On an average, the Department receives the score sheets on the following Wednesday (four days later). The Department will then proceed to score and record the examination results and notify the

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examinees of the results of the examination by either, (1) issuing the examinee their license if he/she passed the exam, or (2) informing them by letter that he/she failed the exam. In some cases, the Department will notify the examinee by telephone of the results of the exam if the salesperson's temporary license is scheduled to expire before he/she could be informed by mail.

Recently, the Department has been receiving a large volume of telephone inquiries from examinees requesting the results of their exam two days after the exam was administered. As stated above,

on an average the Department will not have the results of the examination until Wednesday. Therefore, the Department is requesting that all examinees allow six days to pass from the date of the examination before contacting the Department to inquiry about the results of their exam. This will allow adequate time for the Department to inform examinees of their results and eliminate unnecessary inquiries.

Information via Internet:

The Department is pleased to inform licensees that we have "beefed-up" our web-site (www.dbw.ca.gov) by adding the following information:

1. Applying for a Yacht and Ship Brokers License
2. Applying for a Yacht and Ship Salesperson License
3. Study Material for the Yacht and Ship Broker/ Salesperson Examination
4. Broker/Salesperson License Directory
5. Past Department Information Letters
6. Complaint Form (re:5/00)
7. Yacht and Ship Brokers Act

Please share this information with your staff and remember, if you lose this letter you can now get a copy via Internet!